

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2660

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 17;
AMENDING SECTION 12-2506, ARIZONA REVISED STATUTES; RELATING TO OBSCENE AND
DANGEROUS MATERIAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 6, Arizona Revised Statutes, is amended
3 by adding article 17, to read:

4 ARTICLE 17. DANGEROUS OR OBSCENE MATERIAL LIABILITY

5 12-771. Dangerous or obscene material liability; terrorism;
6 felony acts; definitions

7 A. A PERSON IS LIABLE FOR DAMAGES IF THE PERSON PRODUCES, PUBLISHES OR
8 DISTRIBUTES WRITTEN, AUDIO, VIDEO OR DIGITAL MATERIAL AND ALL OF THE
9 FOLLOWING APPLY:

10 1. THE MATERIAL IS DANGEROUS OR OBSCENE.

11 2. THE PERSON BENEFITED FROM THE PRODUCTION, PUBLISHING OR
12 DISTRIBUTION OF THE MATERIAL.

13 3. THE PERSON KNEW, SHOULD HAVE KNOWN OR RECKLESSLY DISREGARDED A
14 SIGNIFICANT RISK THAT THE MATERIAL WOULD SUBSTANTIALLY ASSIST, ENCOURAGE OR
15 RESULT IN ANOTHER PERSON COMMITTING TERRORISM OR A FELONY OFFENSE.

16 4. THE MATERIAL WAS A CAUSE IN ANOTHER PERSON COMMITTING TERRORISM OR
17 A FELONY OFFENSE AGAINST A VICTIM.

18 B. NOTWITHSTANDING SECTIONS 12-505 AND 12-542, AN ACTION PURSUANT TO
19 THIS SECTION SHALL BE COMMENCED WITHIN TWO YEARS AFTER THE FINAL DISPOSITION
20 OF THE CRIMINAL PROCEEDINGS.

21 C. THE COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO A
22 VICTIM WHO PREVAILS IN AN ACTION PURSUANT TO THIS SECTION.

23 D. FOR THE PURPOSES OF THIS SECTION:

24 1. "DANGEROUS" MEANS MATERIAL THAT IS FOUND BY CLEAR AND CONVINCING
25 EVIDENCE TO INCITE OR PRODUCE AN IMMINENT ACT OF TERRORISM OR A FELONY
26 OFFENSE.

27 2. "OBSCENE" MEANS MATERIAL THAT:

28 (a) THE AVERAGE PERSON, APPLYING CONTEMPORARY COMMUNITY STANDARDS,
29 WOULD FIND THAT THE MATERIAL, TAKEN AS A WHOLE, APPEALS TO THE PRURIENT
30 INTEREST.

31 (b) THE AVERAGE PERSON, APPLYING CONTEMPORARY COMMUNITY STANDARDS,
32 WOULD FIND THAT THE MATERIAL DEPICTS OR DESCRIBES, IN A PATENTLY OFFENSIVE
33 WAY, SEXUAL CONDUCT SPECIFICALLY DEFINED BY STATE LAW.

34 (c) TAKEN AS A WHOLE, LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR
35 SCIENTIFIC VALUE.

36 3. "TERRORISM" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-2301.

37 4. "VICTIM" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-382 OR
38 13-4401.

39 Sec. 2. Section 12-2506, Arizona Revised Statutes, is amended to read:

40 12-2506. Joint and several liability abolished; exception;
41 apportionment of degrees of fault; definitions

42 A. In an action for personal injury, property damage or wrongful
43 death, the liability of each defendant for damages is several only and is not
44 joint, except as otherwise provided in this section. Each defendant is

1 liable only for the amount of damages allocated to that defendant in direct
2 proportion to that defendant's percentage of fault, and a separate judgment
3 shall be entered against the defendant for that amount. To determine the
4 amount of judgment to be entered against each defendant, the trier of fact
5 shall multiply the total amount of damages recoverable by the plaintiff by
6 the percentage of each defendant's fault, and that amount is the maximum
7 recoverable against the defendant.

8 B. In assessing percentages of fault the trier of fact shall consider
9 the fault of all persons who contributed to the alleged injury, death or
10 damage to property, regardless of whether the person was, or could have been,
11 named as a party to the suit. Negligence or fault of a nonparty may be
12 considered if the plaintiff entered into a settlement agreement with the
13 nonparty or if the defending party gives notice before trial, in accordance
14 with requirements established by court rule, that a nonparty was wholly or
15 partially at fault. Assessments of percentages of fault for nonparties are
16 used only as a vehicle for accurately determining the fault of the named
17 parties. Assessment of fault against nonparties does not subject any
18 nonparty to liability in this or any other action, and it may not be
19 introduced as evidence of liability in any action.

20 C. The relative degree of fault of the claimant, and the relative
21 degrees of fault of all defendants and nonparties, shall be determined and
22 apportioned as a whole at one time by the trier of fact. If two or more
23 claimants have independent claims, a separate determination and apportionment
24 of the relative degrees of fault of the respective parties, and any
25 nonparties at fault, shall be made with respect to each of the independent
26 claims.

27 D. The liability of each defendant is several only and is not joint,
28 except that a party is responsible for the fault of another person, or for
29 payment of the proportionate share of another person, if any of the following
30 applies:

- 31 1. Both the party and the other person were acting in concert.
- 32 2. The other person was acting as an agent or servant of the party.
- 33 3. The party's liability for the fault of another person arises out of
34 a duty created by the federal employers' liability act— (45 United States
35 Code section 51).

36 4. THE PARTY PRODUCES, PUBLISHES OR DISTRIBUTES WRITTEN, AUDIO, VIDEO
37 OR DIGITAL MATERIAL PURSUANT TO SECTION 12-771.

38 E. If a defendant is found jointly and severally liable pursuant to
39 subsection D, the defendant has the right to contribution pursuant to this
40 chapter. In an action arising out of a duty created by the federal
41 employers' liability act (45 United States Code section 51), a person or
42 entity, other than an employee of the defendant, whose negligence or fault
43 caused or contributed to the plaintiff's injury or death shall contribute to
44 the defendant pursuant to this chapter. An action for contribution shall be

1 adjudicated and determined by the same trier of fact that adjudicates and
2 determines the action for the plaintiff's injury or death. The trier of fact
3 shall adjudicate and determine an action for contribution after the court
4 enters a judgment for the plaintiff's injury or death. On motion before the
5 conclusion of the trial, the plaintiff is entitled to an award against the
6 defendant for actual expenses the plaintiff incurred as a direct result of
7 the defendant's claim for contribution. The expenses shall include
8 reasonable attorney fees as determined by the court.

9 F. For the purposes of this section:

10 1. "Acting in concert" means entering into a conscious agreement to
11 pursue a common plan or design to commit an intentional tort and actively
12 taking part in that intentional tort. Acting in concert does not apply to
13 any person whose conduct was negligent in any of its degrees rather than
14 intentional. A person's conduct that provides substantial assistance to one
15 committing an intentional tort does not constitute acting in concert if the
16 person has not consciously agreed with the other to commit the intentional
17 tort.

18 2. "Fault" means an actionable breach of legal duty, act or omission
19 proximately causing or contributing to injury or damages sustained by a
20 person seeking recovery, including negligence in all of its degrees,
21 contributory negligence, assumption of risk, strict liability, breach of
22 express or implied warranty of a product, products liability and misuse,
23 modification or abuse of a product.